Supreme Court, U.S.
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IN THE

Supreme Court of the United States

AFRICAN METHODIST EPISCOPAL ZION CHURCH, *et al.*,
Petitioners,

v.

FROM THE HEART CHURCH MINISTRIES, INC., *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of Maryland

REPLY BRIEF IN SUPPORT OF CERTIORARI

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
REPLY BRIEF	1
I. THE DECISION BELOW CREATES A CONFLICT ON THE CONSTITUTIONALITY OF RELIANCE ON DENOMINATIONAL TRUST CLAUSES	1
II. THE DECISION BELOW WIDENS A CONFLICT OVER THE EXTENT TO WHICH THE FIRST AMENDMENT PERMITS COURTS TO EXAMINE ECCLESIASTICAL RELATIONSHIPS	4
III. THIS COURT HAS JURISDICTION	7
CONCLUSION	10

TABLE OF AUTHORITIES

CASES — Page

Ake v. *Okla.*, 470 U.S. 68 (1985) 8
Cal. v. *Stewart*, 384 U.S. 436 (1966) 9
Carnes v. *Smith*, 222 S.E.2d 322 (Ga. 1976) 2
Church of God Pentecostal, Inc. v. *Freewill Pentecostal Church of God, Inc.*, 716 So. 2d 200 (Miss. 1998) 4
Coles v. *Wilburn*, 245 S.E.2d 273 (Ga. 1978) 3
Cox Broad. Corp. v. *Cohn*, 420 U.S. 469 (1975) 8, 9, 10
Crumbley v. *Solomon*, 254 S.E.2d 330 (Ga. 1979) 2
Haney's Chapel United Meth. Church v. *United Meth. Church*, 716 So. 2d 1156 (Ala. 1998) 3
Hurley v. *Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557 (1995) 8
Jones v. *Wolf*, 443 U.S. 595 (1979) 1, 2, 3
Lucas v. *S.C. Coastal Council*, 505 U.S. 1003 (1992) 8
Md. & Va. Eldership of the Churches of God v. *Church of God*, 396 U.S. 367 (1970) 5
Mercantile Nat'l Bank v. *Langdeau*, 371 U.S. 555 (1963) 10
Mitchell v. *Forsyth*, 472 U.S. 511 (1985) 10
NLRB v. *Catholic Bishop*, 440 U.S. 490 (1979) 9
N.D. State Bd. of Pharmacy v. *Snyder's Drug Stores, Inc.*, 414 U.S. 156 (1973) 9
Parent v. *Roman Catholic Bishop*, 436 A.2d 888 (Me. 1981) 4
Presb. Church v. *Mary Elizabeth Blue Hull Mem'l Presb. Church*, 393 U.S. 440 (1969) 6, 7
Serbian E. Orthodox Diocese v. *Milivojevich*, 426 U.S. 696 (1976) 6

TABLE OF AUTHORITIES—continued

STATUTES Page

28 U.S.C. § 1257(a) 8

SCHOLARLY AUTHORITY

R. Stern et al., *Supreme Court Practice* (8th ed. 2002) 10

REPLY BRIEF

Respondents' brief is striking for what it does not dispute. Respondents do not deny that, aside from the decision below, a conflict exists among State supreme courts over the extent to which the First Amendment precludes judicial inquiry into ecclesiastical relationships. Nor do respondents squarely deny that the highest courts of several States have ruled, contrary to the decision below, that the First Amendment *allows* a court adjudicating a church property dispute to give dispositive effect to a denominational constitution of the sort at issue in *Jones* v. *Wolf*, 443 U.S. 595 (1979). Nor do respondents deny what the *amici* brief of the National Council of Churches et al. confirms; *i.e.*, that the decision below is of immense practical importance to religious denominations, both because of its impact on church property disputes, and because it sanctions intrusive inquiries into sensitive ecclesiastical relationships.

Instead, respondents attempt to escape these critical conclusions—and to establish that this Court lacks jurisdiction—by mischaracterizing AME Zion's petition as a challenge to the presumptive *outcome* of the trial-court proceedings ordered by the decision below, rather than the constitutionality of the *proceedings* themselves. As shown below, that effort, and respondents' various distortions of the decision below, merely underscore the need for this Court's review.

I. THE DECISION BELOW CREATES A CONFLICT ON THE CONSTITUTIONALITY OF RELIANCE ON DENOMINATIONAL TRUST CLAUSES.

As to the first conflict identified in the petition, respondents do not dispute that the court below declined to give dispositive effect to the trust clause in AME Zion's *Book of Discipline* on the theory that such reliance would violate the Establishment Clause. Nor could they, as they urged that very theory below. Reply Br. to Md. Ct. App. at 28. And they do not deny that this objection has been rejected, at least

implicitly, by three other State supreme courts applying the neutral principles approach, and numerous other courts applying the "polity" approach. Pet. 12-15. Instead, respondents mischaracterize AME Zion's argument as based on the differing outcomes of these disputes, and argue that there is no genuine conflict because two (but only two) of the cases on which AME Zion relies have been implicitly overruled. Both contentions are thoroughly incorrect.

1. It is of course true, as respondents suggest, that the neutral principles doctrine gives the States flexibility in resolving church property disputes—subject, of course, to constitutional constraints. The very purpose of the doctrine is to permit the resolution of these disputes within the framework of "objective, well-established concepts of [State] trust and property law." *Jones*, 443 U.S. at 603; Pet. 10. And, because that law varies from State to State, one would expect some differences in the outcomes of these disputes, even on similar facts.

That observation, however, is irrelevant to the first conflict identified in the petition—*i.e.*, whether the First Amendment *precludes* a State court from relying exclusively on a denomination's trust clause in resolving a church property dispute. That is purely a question of federal law. And the fact that the Maryland Court of Appeals has ultimate authority to determine trust and property principles under State law does not mean that its ruling on this important issue of federal constitutional law is unworthy of, or beyond, this Court's review.

Similarly, the fact that other State supreme courts have relied upon State law in deciding to place exclusive reliance on a denominational constitution casts no doubt on the existence of the federal-law conflict shown in the petition. In *Carnes* v. *Smith*, for example, the Georgia Supreme Court relied on State law in resolving a dispute over church property based solely on a trust provision in a denominational constitution. 222 S.E.2d 322, 328 (Ga. 1976); see also *Crumbley* v. *Solomon*, 254 S.E.2d 330, 333 (Ga. 1979) (relying on provision in church discipline); cf. Br. in Opp'n ("BIO") 22. But the

predicate for that ruling—and for this Court's approval of that ruling in *Jones*—was that this approach is *consistent* with the First Amendment. 443 U.S. at 600 & n.2. The conflict on this important issue of federal law could hardly be more stark.

2. Nor can respondents evade this conflict by pointing to subsequent decisions by two of the State supreme courts whose decisions were cited in the petition. BIO 23-24; cf. Pet. 12-13, 14 (discussing *Carnes* and *Zion Hill*). These are just two of the decisions that have explicitly or implicitly rejected the First Amendment analysis in the decision below, and in any event, they remain good law.

First, far from undercutting *Carnes*, the decision of the Georgia Supreme Court in *Coles* v. *Wilburn*, 245 S.E.2d 273 (Ga. 1978) reaffirms precisely those aspects of *Carnes* that are relevant here. In *Coles*, as in *Carnes*, the Georgia Supreme Court resolved a church property dispute by relying on the property rules set forth in a denominational constitution. *Id.* at 274. In fact, the court suggested that if the same provision that existed in *Carnes* were present there—a provision nearly identical to the trust provisions in AME Zion's *Book of Discipline*—it would again have deferred to those provisions, as it did in *Carnes*. *Id.* Most important, nothing in *Coles* suggests that the First Amendment *prevents* a state court from relying exclusively on a denominational constitution.

The same is true of *Haney's Chapel United Methodist Church* v. *United Methodist Church*, 716 So. 2d 1156 (Ala. 1998), which, according to respondents, "rejected" the approach in *Zion's Hill*. BIO 23. To be sure, *Haney's Chapel* was decided differently because that case involved a deed, whereas *Zion Hill* involved only the denominational constitution. 716 So. 2d at 1158. But this hardly constitutes "reject[ion]" of *Zion Hill*. To the contrary, the decision to distinguish *Zion Hill* on its facts signals implicit reaffirmance of the decision. And, once again, *Zion Hill* contrasts sharply with the decision of the Maryland Court of Appeals, for it resolved a church property dispute by relying solely on a

denominational constitution, and believed it could constitutionally do so.

II. THE DECISION BELOW WIDENS A CONFLICT OVER THE EXTENT TO WHICH THE FIRST AMENDMENT PERMITS COURTS TO EXAMINE ECCLESIASTICAL RELATIONSHIPS.

Respondents' arguments likewise fail to undermine the second conflict shown in the petition—*viz.*, the conflict over the extent to which civil courts may delve into ecclesiastical relationships. Respondents do not dispute the importance of this issue—which, again, has been amply confirmed by *amici* religious organizations. Br. of *Amici Curiae* 7-10, 14-15. Instead, respondents attempt to downplay the danger of an unconstitutional inquiry on remand, and to explain away the conflict presented in the petition as based on mere "differences in evidence," BIO 10, 22, or "differences in result," *id.* at 21. Neither argument is persuasive.

1. The conflict described in the petition is plainly based on more than "differences in evidence" or "result." Rather, there exists a fundamental conflict over constitutional limitations on judicial inquiry. As shown in the petition, and as respondents do not even acknowledge, the Connecticut Supreme Court and the North Carolina Court of Appeals, like the court below, have permitted wide-ranging inquiries into ecclesiastical relationships notwithstanding First Amendment objections to those inquiries. Pet. 18-19.

Other courts, however, have taken the opposite approach. In *Parent* v. *Roman Catholic Bishop*, Maine's highest court held that the First Amendment *prohibits* an examination into a bishop's authority. 436 A.2d 888, 890 (Me. 1981); Pet. 17. And, in *Church of God Pentecostal, Inc.* v. *Freewill Pentecostal Church of God, Inc.*, the Mississippi Supreme Court likewise recognized the need to limit judicial inquiry to prevent an unconstitutional examination into ecclesiastical relationships. 716 So. 2d 200, 211 (Miss. 1998); Pet. 18.

Contrary to respondents' argument, the significance of these decisions lies not in the "evidence" they considered, or in their "result," but rather in the fact that those courts—unlike the court below—recognized proper constitutional limits on the evidence that courts may consider in a dispute involving a church. Those decisions thus reflect a view of the constitutional limits on judicial inquiry into ecclesiastical relationships that differs starkly from that of the court below, as well as courts in Connecticut and North Carolina.

2. Respondents are also incorrect in dismissing as "specula[tion]" AME Zion's concerns about the invasive inquiry that the decision below will require on remand. It is hardly speculation to assume that the trial court will follow the directions of the Maryland Court of Appeals. And that court, as amply demonstrated in the Petition, has mandated an invasive inquiry into ecclesiastical relationships in the AME Zion Church by requiring the trial court to conduct a review of "'*all* relevant documents and circumstances,'" including "'the relations between the parties,'" to determine whether (a) respondents consented to the denomination's Discipline and (b) whether the denomination later waived the protections of that document. Pet. 7, 19-20.[1]

Respondents do not dispute that the court below has ordered this broad-ranging inquiry. Instead, they attempt to shift the focus, responding that *one* piece of evidence pertinent to *one* of the two issues that must be decided on remand is a "published admission by AME Zion." BIO 25 (emphasis

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[1] Respondents' invocation of *Maryland & Virginia Eldership* v. *Church of God* is thus irrelevant. BIO 10, 15-17. That decision did not approve or require—as the Maryland Court of Appeals did here—an intrusive inquiry into ecclesiastical relationships, to be carried out though an unconstitutional trial regarding waiver and consent. Moreover, it properly recognized that the First Amendment limits the manner in which courts may resolve church property disputes. 396 U.S. 367, 370 (1970) (Brennan, J. concurring) ("principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues").

omitted). But that document only underscores the constitutional problem, for two reasons.

First, litigation of even the issues raised by that document would plainly violate this Court's teachings about the proper scope of judicial inquiry in a dispute involving a church. That document refers, for example, to a "'misconception[]'" that respondents were engaged, among other things, in "'worship practices not in accordance with [AME Zion's] tradition.'" Pet. App. 19a n.20. As reflected in the decision below, respondents wish to argue that this document shows that they "maintained an unconventional relationship" with AME Zion, and that the Church, by accepting this relationship, waived its rights under the Discipline. *Id.* at 19a.

But the trial court cannot adjudicate that claim without determining such matters as (a) *whether* respondents' "worship practices" did, in fact, deviate from the denomination's "tradition" and (b) if so, *why* AME Zion permitted that deviation. Did it permit it because (as respondents would have it) its bishops had decided to release respondents from their obligations under the Discipline, or because they were attempting to use Christian love (rather than legal muscle) to deal with a wayward but redeemable member of the fold? Such an inquiry, now mandated by the Maryland court, runs headlong into this Court's consistent teaching that civil courts may not examine "religious doctrine and practice," *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969), including "questions of church discipline." *Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 717 (1976); Pet. 16-17.

Second, that document is only one of many pieces of evidence, including church documents and depositions of church officials that will undoubtedly be the subject of further discovery, which the trial court will need to examine in conducting its required review of "all relevant documents and circumstances." Pet. App. 34a. Indeed, the discovery required by the decision below, and the trial court's subsequent

inquiry, will necessarily encompass the entire history of the "relations" between respondents and the denomination, *id.*, given that the trial court must now determine whether respondents "consented" to the denomination's Discipline in the first place, and then must determine whether, at any point along the way, the denomination somehow "waived" its rights under the Discipline, *id.* at 18a. Moreover, given that the "relations between" AME Zion's bishops and a subordinate minister are fraught with religious significance, and given that any "consent" or "waiver" would itself have been a religious act, these inquiries inevitably will require an unconstitutional evaluation of AME Zion's "religious doctrine and practice." *Blue Hull*, 393 U.S. at 449.[2]

Thus, respondents' arguments merely confirm that the intrusive judicial inquiry ordered by the decision below will exceed the First Amendment limits on such proceedings, as elucidated by this Court, and applied in decisions such as *Parent* and *Church of God*. The refusal of the court below to recognize and respect those limits merits this Court's review.

III. THIS COURT HAS JURISDICTION.

Respondents are likewise incorrect in challenging this Court's jurisdiction. Preliminarily, it is frivolous to suggest that this Court lacks jurisdiction because it has no power to determine Maryland trust law. BIO 14-15. The fact that the Maryland Court of Appeals is the final arbiter of Maryland trust law does not deprive this Court of its long-standing authority to determine whether State courts have interpreted State law in a manner at odds with federal law, or have adopted an interpretation of State law based upon a misper-

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[2] Respondents are also incorrect in asserting that petitioners' challenge to an unconstitutionally intrusive trial amounts to an objection to any trial whatsoever. BIO 12 (contending that AME Zion is asserting "some sort of privilege not to be subject to a trial at all"); *id.* at 25. It is undoubtedly true that church property disputes may go to trial—this is the very premise of *Jones*. But simply because they *may* go to trial hardly means, as respondents would have it, that there are no limits on those proceedings.

ception of federal law.[3] As the petition makes clear, AME Zion seeks review of the Maryland court's various misinterpretations of the First Amendment, not of any pure issues of Maryland trust law. Accordingly, this case falls squarely within this Court's authority to hear cases "where any ... right, privilege, or immunity is ... claimed under the Constitution" of the United States. 28 U.S.C. § 1257(a).

Nor does the procedural posture of this case deprive this Court of jurisdiction. As the petition makes clear, AME Zion is *not* at this point challenging the likely outcome of the trial ordered by the Maryland Court of Appeals. Rather, it is challenging—as it did below—the constitutionality of the particular trial-court inquiry ordered by that court, as well as that court's view that the First Amendment does not allow it to avoid such proceedings simply by relying upon the Discipline's trust provisions. See Pet. (i), 2-3, 6-16, 17-23.

As shown in the petition, and also not disputed by respondents, a claim that the prosecution of a particular legal proceeding would be unconstitutional falls well within the third category of cases discussed in *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). Here, if the intrusive and unconstitutional inquiry into ecclesiastical relationships mandated by the Maryland Court of Appeals goes forward, the constitutional injury to AME Zion will already have occurred. As this Court has recognized, in this sensitive area, "[i]t is not only the conclusions that may be reached ... which may impinge on rights guaranteed by the Religion Clauses,

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[3] *See Ake* v. *Okla.*, 470 U.S. 68, 75 (1985) ("when resolution of [a] state procedural law question depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and our jurisdiction is not precluded."); *see also, e.g.*, *Lucas* v. *S.C. Coastal Council*, 505 U.S. 1003, 1014-32 (1992) (analyzing state property law to determine whether it created a taking in violation of the Fifth and Fourteenth Amendments); *Hurley* v. *Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 571-73, 578-79 (1995) (evaluating state public accommodations law to determine whether its application to parade organizers violated the First Amendment).

but also the very process of inquiry leading to findings and conclusions." *NLRB* v. *Catholic Bishop*, 440 U.S. 490, 502 (1976). That is precisely what will occur here absent this Court's immediate review. Ecclesiastical confidences will be exposed. Sensitive relationships will be damaged. Religious faith and authority will be undermined. And the public will be treated to the spectacle of a secular court conducting an entangling, inappropriate inquiry into religious matters.

Respondents do not dispute this. Instead, they contend that the third *Cox Broadcasting* category "applies only where the party seeking interlocutory review will be literally prohibited from seeking review in this Court after the state proceedings are finished," and that here, "nothing will prevent [AME Zion] from seeking review in this Court" after trial. BIO 11, 12 n.1. But that misses the point. The critical inquiry is not whether the *case* is subject to later review, but whether "later review of *the federal issue* can[] be had," whatever the ultimate outcome of the case. 420 U.S. at 481 (emphasis added). Here, "the federal issue" presented in the petition—*i.e.*, whether the trial-court *inquiry* mandated by the Maryland Court of Appeals is constitutional—will not be reviewable in this Court after that proceeding occurs, no matter whether petitioners or respondents prevail on remand.[4] Although AME Zion might be able to challenge the outcome of a trial, it will be unable to obtain redress for the injury to its religious mission that will be caused by the proceeding itself. (It cannot, for example, bring a § 1983 suit against the Maryland courts.)

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[4] Accordingly, neither *California* v. *Stewart*, 384 U.S. 436 (1966), nor *North Dakota State Board of Pharmacy* v. *Snyder's Drug Stores, Inc.*, 414 U.S. 156 (1973), mandates a different result, *see* BIO 11-12. Those were challenges to the ultimate outcome of the proceedings, not to the proceedings themselves. For the same reason, it is irrelevant that this case arises on partial summary judgment. *Id.* at 1, 13. Regardless whether summary judgment was partial or complete, the case must be remanded for further proceedings and, absent review by this Court, those proceedings will entail an unconstitutional investigation into ecclesiastical relationships within AME Zion.

Thus, because AME Zion's First Amendment rights cannot be "effectively vindicated after ... trial," *Mitchell* v. *Forsyth*, 472 U.S. 511, 525 (1985), this case falls squarely within the third *Cox Broadcasting* category. Pet. 21-22.[5]

To be sure, some of the cases reviewed under that category involved constitutional immunities against any suit at all, as opposed to a constitutional bar against judicial inquiry into a particular subject matter (here, ecclesiastical relationships). Compare Pet. 22 n.5, with BIO 12 n.1. But that is not a requirement of *Cox*, see 420 U.S. at 481, and even those cases reflect the general principle that interlocutory decisions are "final" for purposes of this Court's review "where the subsequent state proceedings would themselves deny the federal right for the vindication of which review is sought in the Supreme Court," R. Stern et al., *Supreme Court Practice* 154 (8th ed. 2002). That is equally true here, where the intrusive trial-court examination ordered by the decision below would itself violate AME Zion's First Amendment rights.

In short, this petition is AME Zion's only opportunity to challenge the constitutionality of the trial-court proceedings ordered by the Maryland Court of Appeals, as opposed to the outcome of those proceedings. The fact that the decision below contemplates further proceedings therefore does not, as respondents contend, deprive this Court of jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

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[5] This case also falls within the fourth *Cox Broadcasting* category. As in *Mercantile National Bank* v. *Langdeau*, 371 U.S. 555 (1963), the First Amendment issue here is "'anterior to the merits'" of the plaintiff's cause of action, *Cox Broad.*, 420 U.S. at 484 (quoting 371 U.S. at 558)—*viz.*, the ownership under Maryland law of the disputed property (virtually all of which is real, rather than personal, property, *cf.* BIO 2, 20). Moreover, permitting the trial mandated by the Maryland court to go forward will "seriously erode federal policy," 420 U.S. at 483, by permitting an invasive and entangling inquiry into ecclesiastical relationships and disciplinary practices within the AME Zion Church. *See* Pet. 16-17.

Respectfully submitted,

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